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October 17, 2011

**Please Date Stamp & Return
To Holland & Knight LLP**

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VIA HAND DELIVERY

Marlene H. Dortch, Esq., Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Attn: Disability Rights Office,
Consumer & Governmental Affairs Bureau**

FILED/ACCEPTED

OCT 17 2011

Re: Informal Complaint of Cheryl Quintal
FCC Complaint No. 11-C00327837-FC

Federal Communications Commission
Office of the Secretary

Dear Ms. Dortch:

On behalf of WHDH-TV, the licensee of WHDH, Boston, Massachusetts, this letter responds to the above-referenced informal complaint submitted to the Commission by Cheryl Quintal using electronic Form 2000C – Disability Access Complaint (the “Complaint”). Through a *Notice of Informal Complaint* dated September 16, 2011, the Commission informed WHDH of the Complaint.¹ On September 20, 2011, WHDH’s counsel sent a letter to Ms. Quintal acknowledging receipt of the *Notice* and Complaint. Attached hereto is the supporting declaration of Christian Wayland, General Manager of WHDH-TV.

In the Complaint, Ms. Quintal alleged: “With the problem of Hurricane Irene coming to the East coast I was watching the news and all the local stations like CBS, ABC, NBC and Fox do not provide the closed captioning service (08/26/2011 @ 10:19AM).” Ms. Quintal also noted that she receives her television programming through Comcast. Although WHDH regrets that Ms. Quintal believes it failed to make emergency information fully accessible, WHDH must respectfully disagree for the reasons detailed below. In support of this response, WHDH includes a DVD recording of its programming from August 26, 2011 that aired from approximately 10:00 a.m. to 11:00 a.m. This recording is from WHDH’s direct feed to Comcast. WHDH notes that the entirety of this programming contained closed captions, except for short advertisements and other promotional announcements (each being far less than 10 minutes in duration), which are exempted from the FCC’s closed captioning rule.²

¹ The September 16, 2011 date of the *Notice* established October 16, 2011 as the deadline for WHDH’s response. However, because October 16, 2011 was a Sunday, the deadline automatically became October 17, 2011. See 47 C.F.R. §1.4.

² See 47 C.F.R. §79.1(d)(6).

The Complaint alleges a lack of captioning of emergency information at 10:19 a.m. WHDH was not airing any emergency information at that time. Rather, it was airing a segment of *The Today Show* entitled "Food Deals." Moreover, as noted, this programming was fully captioned.

At 10:08:55 and 10:33:27, *The Today Show* cut to NBC affiliates, including WHDH, for 30-second local weather reports. WHDH fully captioned both of these programming segments. During these reports, which contained no emergency information, WHDH personnel stated that the weather that day (*i.e.*, Friday, August 26, 2011) would be warm and dry. They also noted that the outer bands of Hurricane Irene would cause some showers by Saturday afternoon or evening, but that heavy winds and rain would not occur until Sunday.

Although Ms. Quintal referred to 10:19 a.m., not 10:26 a.m., in her description of the events about which she complained, the Complaint does reference 10:26 a.m. as part of Item 4, but without any elaboration. WHDH notes that at 10:26 a.m. its programming did mention weather events, including Hurricane Irene. However, as the enclosed recording makes clear, this extremely brief segment simply was a pre-recorded promotion of WHDH's newscasts and provided no current or local information that conceivably could be considered "emergency" information subject to §79.2 of the Commission's rules.

Based on the foregoing, WHDH respectfully requests that the Commission dismiss the Complaint. In the event that there are questions concerning this matter, please communicate with the undersigned.

Very truly yours,



Charles R. Naftalin
Leighton T. Brown
Counsel to WHDH-TV

cc: Cheryl Quintal (*via U.S. Mail*)
22 Second Avenue
Lowell, MA 01854

DECLARATION OF CHRISTIAN WAYLAND

I, Christian Wayland, declare the following.

I am more than 18 years of age, am competent to testify, and I understand my obligation to tell the truth.

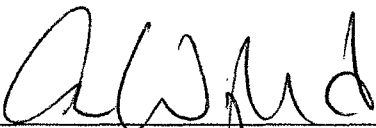
I am the General Manager of WHDH-TV, the licensee of WHDH, Boston, Massachusetts. I have been the General Manager of WHDH-TV since November 3, 2008.

I have read a copy of the informal complaint of Sandra Bass submitted to the Federal Communications Commission ("FCC") as provided by the FCC by notice dated September 16, 2011. I am familiar with the circumstances of WHDH programming that appears to be the subject of Ms. Quintal's complaint.

I participated in the preparation of the October 17, 2011 WHDH response to Ms. Quintal's complaint, including by reading and approving of a materially complete final draft of it. Except with respect to matters of public record, or for which the FCC may take official notice, the assertions of fact in WHDH's response are correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

October 14, 2011


Christian Wayland